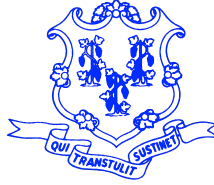


The Connecticut General Assembly

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Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: August 28, 2012

| | |
|--|---|
| Regulation No: | 2012-33 |
| Agency: | Department of Labor |
| Subject Matter: | General Working Conditions in Shipyard Employment |
| Statutory Authority: (copy attached) | 31-372 |

| | Yes or No |
|----------------------------|-----------|
| Mandatory | Y |
| Federal Requirement | N |
| Permissive | N |

For the Committee's Information:

Substantive Concerns:

Technical Corrections:

1. On page 2, in the fourth line of section 31-372-102-1915, subpart F 1915.83, "5/2/11" and "New" should be moved to the "Fed. Reg. Date" and "Action" columns for consistency with the remainder of the proposed regulations.

Recommendation:

| | |
|----------|--|
| X | Approval in whole |
| X | with technical corrections |
| | with deletions |
| | with substitute pages |
| | Disapproval in whole or in part |
| | Rejection without prejudice |

Reviewed by: Eric W. Gjede / Richard Hanratty

Date: August 6, 2012

Sec. 31-372. Adoption of federal and state standards. Variances. (a) The commissioner shall provide for the adoption of all occupational health and safety standards, amendments or changes adopted or recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970. Where no federal standards are applicable, the commissioner shall provide for the development of such state standards as may be necessary in special circumstances.

(b) No standards shall be adopted for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

(c) Subject to the time period limitations of subsection (f) of section 4-168, in the event of emergency or unusual situations the commissioner shall provide for an emergency temporary standard to take immediate effect upon publication in the Connecticut Law Journal if he deems (1) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and (2) that such emergency standard is necessary to protect employees from such danger. Such emergency standard shall be in effect not longer than one hundred twenty days or, if renewed in compliance with subdivisions (1) and (2) of this subsection, not longer than sixty additional days. On or before the expiration date of such emergency standard or renewal thereof, the commissioner shall develop a permanent standard to replace such emergency standard.

(d) Any standard promulgated shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure where appropriate. Such standard shall also prescribe suitable protective equipment and control procedures to be used in connection with such hazards and shall provide for measuring employee exposure in such manner as

may be necessary for the protection of employees. In addition, where appropriate, such standard shall prescribe the type and frequency, medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to determine any adverse effect from such exposure.

(e) Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (f) of this section and establishes that the employer (1) is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (2) is taking all available steps to safeguard employees against the hazards covered by the standard, and (3) has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice as long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than one hundred eighty days.

(f) An application for a temporary variance order shall contain: (1) A specification of the standard or portion thereof from which the employer seeks a

variance; (2) a representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor; (3) a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard; (4) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard; and (5) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing. The commissioner is also authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(g) Any affected employer may apply to the commissioner for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the

extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer or employees, or by the commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(h) Any person who may be adversely affected by a standard or regulation issued under this section may challenge the validity or applicability of such standard or regulation by bringing an action for a declaratory judgment in accordance with section 4-175.